

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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In the Matter of: )  
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)

Duke Energy Grays Harbor, LLC and )  
Energy Northwest, Satsop Combustion )  
Turbine Project Electrical Generating )  
Facility, )  
)

Elma, Washington, )  
)

Respondents. )  
\_\_\_\_\_)

Docket No. CAA-10-2001-0097

ADMINISTRATIVE ORDER  
ON CONSENT

ADMINISTRATIVE ORDER ON CONSENT

WHEREAS, the Environmental Protection Agency (“EPA”) and Energy Facility Site Evaluation Council (“EFSEC”) issued a Prevention of Significant Deterioration (“PSD”) permit to Energy Northwest on September 12, 1996, for the purpose of constructing the Satsop Combustion Turbine Project Electrical Generating Facility (“Satsop CT Project”) to be located in Elma, Washington;

WHEREAS, the current PSD permit for the Satsop CT Project allows for the installation of two separate combined cycle, natural-gas fired power generation lines, each line rated at 245 megawatts (“MW”) and consisting of a Westinghouse 501F combination turbine generator (“CTG”), a heat recovery steam generator (“HRSG”), and a Westinghouse steam turbine generator (“STG”);

WHEREAS, effective March 11, 1998, EPA and EFSEC granted an 18-month extension of the PSD permit issued for the Satsop CT Project;

WHEREAS, effective September 11, 1999, EPA and EFSEC granted Energy Northwest a second 18-month extension of the PSD permit issued for the Satsop CT Project;

WHEREAS, the current 18-month extension expired on March 11, 2001;

WHEREAS, the current PSD permit for the Satsop CT Project requires the installation of Best Available Control Technology ("BACT") which was determined for nitrogen oxides ("NO<sub>x</sub>") to be a combination of advanced dry-low NO<sub>x</sub> combustor technology with selective catalytic reduction ("SCR") control technology;

WHEREAS, the current PSD permit requires that NO<sub>x</sub> emissions from each CTG/HRSG exhaust stack of the Satsop CT Project shall not exceed an hourly average of 3.0 parts per million by volume, dry ("ppmdv") corrected to 15 percent oxygen ("O<sub>2</sub>");

WHEREAS, Duke Energy Grays Harbor, LLC, and Energy Northwest are partners in constructing the Satsop CT Project;

WHEREAS, Duke Energy and Energy Northwest were not able to commence or begin actual construction of the Satsop CT Project prior to the expiration of the second 18-month extension on March 11, 2001;

WHEREAS, under the federal PSD regulations found at 40 C.F.R. § 52.21(b)-(w) which have been incorporated into the Washington State Implementation Plan ("Plan") at 40 C.F.R.

§ 52.2497, a “major stationary source” may not begin actual construction without first obtaining a PSD permit which states that the source meets the requirements of 40 C.F.R. § 52.21(j)-(r);

WHEREAS, pursuant to 40 C.F.R. § 52.21(u), EPA has partially delegated to EFSEC responsibility for administering and enforcing the federal PSD regulations;

WHEREAS, under the EFSEC regulations for air permit applications (WAC 463-42-385) and Ecology regulations for new source review (WAC ch. 173-400), an owner or operator must file a notice of construction application and obtain an approval order and PSD permit prior to beginning actual construction of a major stationary source;

WHEREAS, construction of the Satsop CT Project will constitute construction of a major stationary source under the previously mentioned federal and state regulations;

WHEREAS, the Governor of Washington signed a Proclamation on January 26, 2001, finding that vital public services, particularly affordable electrical power, are at risk and there exists a situation that threatens to disrupt or diminish the supply of energy to the extent that the public health, safety, and general welfare may be jeopardized, and declared an energy supply alert within the State of Washington;

WHEREAS, the Governor of Washington sent a letter to EPA dated March 28 2001, stating that because of the State of Washington’s current critical energy supply situation, it was in the public interest to allow Duke Energy and Energy Northwest to begin construction of the Satsop CT Project prior to the issuance of a PSD permit;

WHEREAS, Duke Energy and Energy Northwest propose to modify the Satsop CT Project to utilize General Electric (“GE”) equipment that will produce approximately 650 MW of electricity and plan to commence commercial operation in 2003;

WHEREAS, Duke Energy and Energy Northwest intend to apply for a new PSD permit for the Satsop CT Project;

WHEREAS, in order to meet the projected date for Commencing Commercial Operation, and because of a limited construction season due to weather conditions, Duke Energy and Energy Northwest plan to begin actual construction of the Satsop CT Project in June 2001;

WHEREAS, Duke Energy and Energy Northwest agree that they will not commence commercial operation of the Satsop CT Project until they have obtained, and are complying with, a new PSD permit;

WHEREAS, the current PSD permit allows the Satsop CT Project to burn oil 360 hours per combustion turbine per calendar year resulting in potential NO<sub>x</sub> emissions of 32 tpy and SO<sub>2</sub> emissions of 36 tpy;

WHEREAS, Duke Energy and Energy Northwest further agree to burn only natural gas and will not request to have the option of burning oil, or any other petroleum product, in the new PSD permit;

WHEREAS, EPA believes that no air pollution standards will be exceeded, and no harm to the environment will occur if Duke Energy and Energy Northwest begin actual construction of the Satsop CT Project prior to receiving a new PSD permit;

WHEREAS, EPA, Duke Energy, and Energy Northwest (the “Parties”) agree that in order to assist in alleviating the energy generation shortfall and to prevent a future shortfall in Washington State, this Administrative Order on Consent (“Order”) is in the public interest;

NOW, THEREFORE, the Parties agree that:

**I. Authority to Issue Order**

1. EPA has the authority to issue the order pursuant to Section 167 of the Clean Air Act, 42 U.S.C. § 7477 (“Act”).

**II. Applicability and Binding Effect**

2. This Order shall apply to and be binding upon EPA and Duke Energy and Energy Northwest, their successors and assigns, and their officers, directors, agents, servants, and employees in their capacities as such, assignees and delegates and all other persons and entities as provided for in Fed. R. Civ. P. 65(d).

3. From the Effective Date of this Order, until its termination, Duke Energy and Energy Northwest shall give written notice and a copy of this Order to any successors in interest at least thirty (30) days prior to any transfer of ownership of any portion of or interest in the Satsop CT Project, or any assignment of rights concerning, or delegation of duties relating to, any of the operations of the Satsop CT Project. Duke Energy and Energy Northwest shall condition any transfer, in whole or in part, of ownership of, operation of, or other interest in the Satsop CT Project upon a binding written commitment to fully and successfully execute the terms and conditions of this Order. Simultaneously with such notice, Duke Energy and Energy Northwest

shall provide written notice of such transfer, assignment, or delegation to EPA. In the event of any such transfer, assignment, or delegation, Duke Energy and Energy Northwest shall not be released from the obligations or liabilities of this Order unless EPA has provided written approval of the release of said obligations or liabilities.

### **III. Definitions**

4. Unless otherwise expressly provided herein, terms used in this Order shall have the meaning given to those terms in the Clean Air Act, and the regulations promulgated thereunder, and the Washington SIP and the regulations promulgated thereunder. In addition, the following definitions shall apply to the terms contained within this Order:

“BACT” means the Best Available Control Technology, as defined by Section 169(3) of the Act, 40 C.F.R. § 52.21(b)(12), and WAC 173-400-030(10) as incorporated into the Washington SIP;

“Commence commercial operation” shall have the same meaning as that term is given under 40 C.F.R. § 72.2, which is to have begun to generate electricity for sale, including the sale of test generation;

“Duke Energy” means Duke Energy Grays Harbor, LLC, its successors and assigns, and its officers, directors, agents, servants, and employees in their capacities as such, assignees and delegates and all other persons and entities as provided for in Fed. R. Civ. P. 65(d);

“Effective Date” means the latter date, if any, of signature by the Parties;

“Energy Northwest” means Energy Northwest, its successors and assigns, and its officers, directors, agents, servants, and employees in their capacities as such, assignees and delegates and all other persons and entities as provided for in Fed. R. Civ. P. 65(d);

“Order” means this Administrative Order on Consent;

“Parties” means EPA, Duke Energy, and Energy Northwest;

“Satsop CT Project” means the Satsop Combustion Turbine Project Electrical Generating Facility located in Elma, Washington, owned by Duke Energy and Energy Northwest.

#### **IV. Terms and Conditions**

5. Duke Energy and Energy Northwest shall submit a PSD permit application for the construction of the Satsop CT Project to EPA and EFSEC within 60 days of the Effective Date of this Order.

6. EPA agrees to use its best efforts to review the PSD permit and issue a new PSD permit jointly with EFSEC as expeditiously as possible.

1. The BACT analysis contained in the PSD permit application shall be conducted as it would be for any proposed combustion turbine project and shall not be prejudiced by the fact that the actual construction of the Satsop CT Project has begun.

8. In its PSD permit application, Duke Energy and Energy Northwest shall request that BACT be no less stringent than what was determined to be BACT in its current PSD permit (i.e. a combination of advanced dry-low NO<sub>x</sub> combustor technology with SCR control technology for NO<sub>x</sub>).

9. In its PSD permit application, Duke Energy and Energy Northwest shall request that the NO<sub>x</sub> emissions from each CTG/HRSG exhaust stack of the Satsop CT Project not exceed 3.0 ppmdv corrected to 15 percent O<sub>2</sub> calculated on a hourly average. Duke Energy and Energy Northwest shall also request that the NO<sub>x</sub> emissions from each CTG/HRSG exhaust stack not exceed 2.5 ppmdv corrected to 15 percent O<sub>2</sub> calculated on a rolling 12-month average.

10. In its PSD permit application, Duke Energy and Energy Northwest shall request that the ammonia ("NH<sub>3</sub>") emissions from each CTG/HRSG exhaust stack of the Satsop CT Project not exceed 10.0 ppmdv corrected to 15 percent O<sub>2</sub> averaged over a 24-hour period. Duke Energy and Energy Northwest shall request that it be required to replace the SCR catalyst when the 24-hour average NH<sub>3</sub> emissions exceed 5.0 ppmdv corrected to 15 percent O<sub>2</sub>.

11. In its PSD permit application, Duke Energy and Energy Northwest shall request that the carbon monoxide emissions from each CTG/HRSG exhaust stack of the Satsop CT Project not exceed 2.0 ppmdv corrected to 15 percent O<sub>2</sub> calculated on an hourly average.

12. In its PSD permit application, Duke Energy and Energy Northwest shall not request the ability to burn any oil or other petroleum product, including No. 2 distillate fuel.

13. Duke Energy and Energy Northwest shall not commence commercial operation of the Satsop CT Project until it receives a new PSD permit at least as protective as the conditions in paragraphs 7-12 above.

14. EPA hereby reserves its right to be present during any and all emissions testing



conducted at the Satsop CT Project. Accordingly, Duke Power and Energy Northwest shall provide EPA advance written notice of its proposed testing. The advance written notice shall be received by EPA at least three business days prior to testing.

**V. Effect of this Administrative Order**

15. Duke Energy's and Energy Northwest's compliance with the terms and conditions of this Order will resolve any and all liability of Duke Energy and Energy Northwest under the federal Clean Air Act for beginning actual construction of the Satsop CT Project without first applying for and obtaining a PSD permit. Compliance with this Order will not resolve Duke Energy's and Energy Northwest's liability for any violations unrelated to these particular PSD requirements.

16. While this Order is in effect, Duke Energy and Energy Northwest agree not to dispute before the Environmental Appeals Board, in a court of law, or otherwise, the applicability of PSD requirements to the Satsop CT Project.

17. The Parties reserve all other rights and remedies, legal and equitable, to enforce the provisions of this Order.

18. Nothing in this Order shall be construed to limit the power of EPA to undertake any action against Duke Energy or Energy Northwest or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

1. This Order is neither a permit, license, authorization, nor a modification of

existing permits under any federal, state, or local law, and in no way relieves Duke Energy or Energy Northwest of its responsibilities to comply with all applicable federal, state, and local laws and regulations, except as specifically provided in this Order.

1. EPA also reserves all rights to review, comment on, and object to the proposed PSD permit regarding the Satsop CT Project.

## **VI. General Provisions**

21. Any modification of this Order shall be by agreement of the Parties and in writing and shall not take effect until the written agreement is signed by all Parties.

22. This Order shall be effective upon the latter date, if any, of signature by the Parties. Signature by each Party on any copy of the Order shall constitute signature of the Order for determining the effective date.

23. Unless this Order states otherwise, whenever, under the terms of this Order, written notice is required to be given, or a report or other document is required to be sent by one party to another, it shall be directed to the individuals specified at the addresses specified below in paragraph 24, unless those individuals or their successors give notice of a change of address to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided.

24. The following addresses shall be used for notices and submissions required by this Order:

As to EPA:

Dan Meyer  
U.S. Environmental Protection Agency Region 10  
1200 Sixth Avenue, OAQ-107  
Seattle, WA 98101-1128

As to Duke Energy:

Michael J. Sotak, Environmental Manager  
Duke Energy North America, LLC  
655 3<sup>rd</sup> St. PMB 49  
Oakland, CA 94607

As to Energy Northwest:

Laura Schinnell, Project Scientist  
471 Lambert Road  
P.O. Box 1223  
Elma, Washington 98541

## **VII. Termination of this Order**

1. This Order shall terminate automatically upon issuance of a PSD permit for the Satsop CT Project.

26. Notwithstanding paragraph 25 above, this Order shall terminate, after notice by EPA, if any of the following occurs: (1) Duke Energy and Energy Northwest do not comply with the material provisions of this Order; or (2) an imminent and substantial endangerment to public health, welfare, or the environment has occurred which EPA believes requires termination of this Order. This Order terminates immediately upon receipt by Duke Energy and Energy Northwest of the notice of termination.

### **VIII. Survival of Terms**

27. Paragraphs 15 and 18 of this Order shall survive the termination of this Order, unless EPA terminates this Order pursuant to paragraph 26, in which case the Parties will retain the legal rights and responsibilities as they stood prior to the Effective Date of this Order.

### **IX. Signatories**

1. The undersigned, representatives of the Parties, each certify that he or she is authorized to enter into the terms and conditions of this Order and to bind legally the Parties to this Order.

Date: March 30, 2001

\_\_\_\_\_/s/\_\_\_\_\_  
Barbara McAllister, Director  
Office of Air Quality  
EPA, Region 10

Date: \_\_\_\_\_

\_\_\_\_\_/s/\_\_\_\_\_  
Kevin R. Johnson  
Duke Energy Grays Harbor, LLC

Date: \_\_\_\_\_

\_\_\_\_\_/s/\_\_\_\_\_  
Laura Schinnell  
Energy Northwest